

§ 757.19

the attorney need only ask the JAG designee for assistance in scheduling the testimony of the treating physician and the JAG designee will coordinate with the physician's command to determine availability. Such testimony is limited to factual issues. The definition of factual issues is slightly different under the regulations than it is in civil litigation. Opinions that are formed prior to, or contemporaneously with, the treatment at issue and are routinely required in the course of the proper performance of professional duties constitute essentially factual matters. For example, the physician will have opined at the time of treatment if further treatment will be necessary. The physician may testify to that as factual, not opinion, testimony. Opinions that are formed after treatment and are not required for continuing treatment, especially those that respond to hypothetical questions, are not factual and are considered to be expert testimony. This expert testimony, regardless of who requests it, will be processed in accordance with 32 CFR part 725, and must be forwarded to OJAG Code 14, General Litigation Division. Requests for expert testimony are rarely granted.

[72 FR 53429, Sept. 19, 2007]

§ 757.19 Waiver and compromise.

(a) *General.* OJAG Code 15 (Claims and Tort Litigation) may authorize waiver or compromise of any claim that does not exceed \$100,000.00. NLSO EURSWA may agree to compromise or waive claims for \$40,000.00 or less. NLSO EURSWA claims in excess of

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\$40,000.00 may be compromised or waived only with Code 15 approval.

(b) *Waiver and compromise.* The JAG designee may waive the Federal government's MCRA interest when a responsible third-party tortfeasor cannot be located, is judgment proof, or has refused to pay and litigation is not feasible. Waiver or compromise is also appropriate when, upon written request by the injured person or legal representative, it is determined that collection of the full amount of the claim would result in undue hardship to the injured person. In assessing undue hardship, the following should be considered:

- (1) Permanent disability or disfigurement;
- (2) Lost earning capacity;
- (3) Out-of-pocket expenses;
- (4) Financial status;
- (5) Disability, pension and similar benefits available;
- (6) Amount of settlement or award from third-party tortfeasor or contract insurer; and
- (7) Any other factors which objectively indicate fairness requires waiver.

[57 FR 5072, Feb. 12, 1992, as amended at 72 FR 53430, Sept. 19, 2007]

§ 757.20 Receipt and release.

The JAG designee will execute and deliver appropriate releases to third parties who have made full or agreed upon compromised payments. A copy of the release will be kept in the claims file.

[72 FR 53430, Sept. 19, 2007]